

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

MARCH 14, 2006

President Danny Cook called the meeting to order at 10:05 a.m. in Conference Room 160, Davy Crockett Tower, Nashville, Tennessee.

Board members present were Danny Cook, President, Bob Foster, Wendy Hellum, Stephen Murphy, and Nancy Vincent. Board members Ralph Buckner, Jr., and David Murphy were absent.

Staff members present were Robert Gribble, Executive Director; Lauren Kitchell, Staff Attorney; Bill Luna, Jimmy Kesey and Roy Bozeman, Field Representatives; Sandra Cooper and Jimmy Gossett, Administrative Assistants.

APPROVAL OF MINUTES:

A motion was made by Ms. Vincent to approve the minutes of the January 10, 2006 Board meeting.

Seconded by Mr. Foster

Adopted by voice vote

APPROVAL OF FUNERAL DIRECTOR AND/OR EMBALMER LICENSES:

Upon motion, based upon the application records, the following applicants were approved for licensure.

**Jeremy David Ledford
Lebanon, TN**

Funeral Director

**Joe F. Sistare
Bartlett, TN**

Funeral Director

**Randy Thomas Stoecker
Goodlettsville, TN**

Funeral Director

**George Edward Williams
Spencer, TN**

Funeral Director

**Kristi Lee Sellars
Nashville, TN**

Funeral Director/Embalmer

**James Andrew Staton
Riceville, TN**

Funeral Director/Embalmer

**Jeff L. Wilson
Sparta, TN**

Funeral Director/Embalmer

**Bobby R. Hughes
Memphis, TN**

**Funeral Director/Embalmer
Reciprocity**

**James Patrick Brosnan
Church Hill, TN**

**Funeral Director/Embalmer
Reciprocity**

**James Michael Vantrease
Bowling Green, KY**

**Funeral Director/Embalmer
Reapplication**

APPROVAL OF ESTABLISHMENT LICENSES: Upon motion, based upon the application records, the following applicants were approved for licensure.

**Ellis Funeral Home and
Cremation Service
Nashville, TN**

**Name Change
Ownership: Corporation**

**Reed Funeral Home
Whitwell, TN**

**Name and Location Changes
Ownership: Corporation**

**Family Heritage Funeral Home
Gallatin, TN**

**Name and Ownership Changes
New Ownership: Corporation**

**Bond Memorial Chapel
Mount Juliet, TN**

**Name and Ownership Changes
New Ownership: Corporation**

**Cross Funeral Home, Inc.
LaFollette, TN**

**Change of Ownership
New Ownership: Corporation**

**Lynchburg Funeral Home, LLC
Lynchburg, TN**

**Change of Ownership
New Ownership: LLC**

**Click Funeral Home and Cremations,
Hardin Valley Chapel
Knoxville, TN**

**New Establishment
Ownership: LLC**

**Dixie Funeral Home
Grand Junction, TN**

**New Establishment
Ownership: Proprietorship**

**Murfreesboro Funeral Home
and Cremation Services, Inc.
Murfreesboro, TN**

**New Establishment
Ownership: Corporation**

R. A. Clark Funeral Service, Inc.
Bristol, TN

New Establishment
Ownership: Corporation

DISAPPROVAL OF ESTABLISHMENT LICENSE: Upon motion, based upon the application records, the following applicant was denied approval for licensure.

Grant Funeral Services
Estill Springs, TN

New Establishment
Ownership: Partnership

Board members discussed the proposed establishment not having accommodations for the viewing of casketed human remains. Additionally, the zoning letter from the Town of Estill Springs referenced a different business and street location, Estill Monument, 602 South Main Street, and stated the property was zoned commercial for a "funeral service office" instead of a funeral home.

A motion was made by Mr. Murphy to deny approval of the establishment application based upon Tennessee Code Annotated § 62-5-313, requirements for operation, and Tennessee Code Annotated § 62-5-317(b)(17) which grants the Board authority to refuse to grant a license if the applicant has failed to comply with any provision of this chapter or any rule or regulation promulgated or adopted by the board.

Seconded by Mr. Foster

Adopted by voice vote

LEGAL REPORT:
LAUREN KITCHELL, STAFF ATTORNEY

- **Notice of Suspension – Delinquent Child Support**

Upon motion by Mr. Steve Murphy and second by Ms. Hellum, the Board approved the suspension of licensees or registered apprentices of the Board of Funeral Directors and Embalmers pursuant to Tenn. Code Annotated, Title 36, Chapter 5, Part 7, regarding delinquent child support. The motion was adopted by voice vote.

- **Legal Case Report**

1. Case No.: L06-FUN-RBS-2005043851

Complaint is the result of an inspector's notice of violation which alleges: the licensed establishment cannot be utilized in its current condition. The preparation room does not have necessary drainage, ventilation, or necessary instruments and supplies for the preparation of dead human bodies.

Response from FH states that they have ceased all operations at the FH and building renovations and repairs are currently being made so that the business

will reach compliance with all regulations in the future. The FH will apply for a license reestablishment at a future date.

Recommendation: Close w/ no action.

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Ms. Vincent

Adopted by voice vote

2. Case No.: L05-FUN-RBS-2005045311

Complaint is the result of an inspector's notice of violation which alleges: two FTC violations; two of the 16 required items to be priced on the GPL show no prices; price charged for embalming exceeds price shown on the GPL. Inspector also noted that the funeral directors license and the embalmers license were not available for inspection.

Response from FH states that the licenses are now available for inspection and the price lists have been corrected.

Recommendation: Consent Order assessing \$500 civil penalty and authorization for a Formal Hearing.

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Ms. Vincent

Adopted by voice vote

3. Case No.: L06-FUN-RBS-2006000431

Anonymous complaint alleges that FH is engaged in illegal advertising. Holiday advertisement has picture of staff and names of people who work at FH. People who are not licensed funeral directors have a star beside their name indicating that they are not licensed FD.

FH response apologizes but states they thought the advertisement was in compliance by noting the non-funeral directors.

Recommendation: Dismiss

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Ms. Helling

Adopted by voice vote

4. Case No.: L06-FUN-RBS-2005045251

Complaint is the result of an inspector's notice of violation which alleges: establishment not registered as a preneed seller.

Recommendation: Transfer to Burial Services

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Ms. Helling

Adopted by voice vote

5. Case No.: L06-FUN-RBS-2005045261

Repeat of Case No. # 4 at a different location.

Recommendation: Transfer to Burial Services

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Ms. Helling

Adopted by voice vote

6. Case No.: L06-FUN-RBS-2005043321

Complainant believes she was not told the truth by respondent FD. She alleges that her aunt passed away at a nursing home and she gave the nurse there instructions on what FH to call to make the removal. Complainant alleges that the wrong FH came to get the body and the FD called her to get permission to embalm the body. When she realized that it was the wrong FH she asked the FD if he could take the body to the correct FH. Complainant alleges that FD told her he would not, but that he would take her back to the nursing home.

FD responds that it was a misunderstanding. Either the nursing home made the mistake or the complainant told the nurse the wrong FH. He apologizes and denies any wrong doing on his behalf.

Recommendation: Dismiss

A motion was made by Ms. Helling to accept Counsel's recommendation.

Seconded by Mr. Steve Murphy

Adopted by voice vote

7. Case No.: L06-FUN-RBS-2005045271

Complaint is the result of an inspector's notice of violation which alleges: establishment not registered as a pre-need seller.

Recommendation: Transfer to Burial Services

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation

Seconded by Ms. Vincent

Adopted by voice vote

8. Case No.: L06-FUN-RBS-2005042841

Complaint is the result of an inspector's notice of violation which alleges: eleven FTC violations including; deficiencies on the GPL, CPL, OBCPL, and goods and services contract. Inspector also noted that the funeral directors license was not available for inspection. He also noted that there was no embalming fluid in the preparation room and no disinfectant found for disinfection of instruments.

FH sent in corrected price lists and states that the funeral directors license is now available for inspection. FH also states that there is disinfectant and embalming fluid in the preparation room.

Recommendation: Consent Order assessing \$750 civil penalty and authorization for a Formal Hearing.

A motion was made by Mr. Foster to accept Counsel's recommendation.

Seconded by Mr. Steve Murphy

Adopted by voice vote

9. Case No.: L06-FUN-RBS-2005041841

Complaint is the result of an inspector's notice of violation which alleges: eleven FTC violations including; deficiencies on the GPL, CPL, OBCPL, and goods and services contract. Inspector also noted that the preparation room floor needs to be replaced and the drainage sink was not working properly.

FH stated that the price lists have been corrected. FH also states that the preparation room floor has been replaced and the sink is now in working condition.

Recommendation: Consent Order assessing \$500 civil penalty and authorization for a Formal Hearing.

A motion was made by Mr. Foster to accept Counsel's recommendation.

Seconded by Mr. Steve Murphy

Adopted by voice vote

10. Case No.: L06-FUN-RBS-2005042711

Complaint is the result of an inspector's notice of violation which alleges: five FTC violations including; deficiencies on the OBCPL and goods and services contract.

FH sent in corrected price lists.

Recommendation: Consent Order assessing \$250 civil penalty and authorization for a Formal Hearing.

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Mr. Foster

Adopted by voice vote

11. Case No.: L05-FUN-RBS-2005028181

Anonymous compliant alleging advertisement for unlicensed FH was presented to the Board at the October meeting. The Board accepted Counsel's recommendation for \$500 civil penalty. New information, which was not in the legal file when first presented, has been resent to legal by the respondent which suggests an error was made by the business journal who ran the ad.

Recommendation: Letter of Warning

A motion was made by Ms. Hellum to accept Counsel's recommendation.

Seconded by Mr. Foster

Adopted by voice vote

12. Case No.: L05-FUN-RBS-2005026551

Complaint was presented to the Board at the September 2005 meeting. The Board accepted counsel's recommendation for a \$1000 civil penalty. New information, which was not in the legal file when first presented, has been resent to legal by the respondent which suggests that the complaint is the result of a misunderstanding and not a violation of the law.

Complainant and his wife applied for ten year burial policies on March 18, 1995. He dropped in unscheduled at FH in March 2005 to see what else needed to be done, believing that the policy was paid up. It turns out that the policies had not been issued until April 1996, meaning the Complainant was obligated to make another year's worth of premium payments.

A Pastor selling pre-need packages for the FH sent in a letter stating that the complainants met with him in March of 1995 to make arrangements for funeral prearrangements. He states that shortly after the appointment the complainants notified him that they had decided to wait in making a final decision regarding prearrangements. They requested that he not send in the application forms and premium payment to the insurance company until they had decided what to do. The pastor states that he told complainants that he would file the application and wait to hear from them. When they contacted him a year later they told him they were ready to apply and so he sent in the application and the premium payment to the insurance company. He states that the applications were held at their request and not because of an error by him or the FH.

Recommendation: Letter of Warning

A motion was made by Mr. Steve Murphy to dismiss the complaint.

Seconded by Mr. Foster

Adopted by voice vote

13. Case No.: L05-FUN-RBS-2005039371

Complaint is the result of an inspector's notice of violation which alleges: pre-need funeral service contracts must be registered with the State of Tennessee.

Recommendation: Transfer to Burial Services

A motion was made by Ms. Vincent to accept Counsel's recommendation.

Seconded by Mr. Steve Murphy

Adopted by voice vote

14. Case No.: L06-FUN-RBS-2005045281

Complaint is the result of an inspector's notice of violation which alleges: the FH does not have a licensed FD manager/supervisor onsite when the FH is open. This FH is a satellite FH. An unlicensed person is there during the week to answer the phones.

FH responds that they are not in violation of the law. Manager states that this location is a branch of the main FH and that he manages and supervises each and every service. He states that the person who is there during the week is an answering service and all she does is answer the phone and make coffee. He states that a licensed FD makes all service arrangements. He states that the law does not say that a licensed FD must be present if the FH is unlocked and open.

Recommendation: Letter of Caution

A motion was made by Ms. Vincent to issue a Letter of Warning stating that when operating as a satellite chapel (as this location does), there needs to be a licensed funeral director present whenever the establishment is accessible by the public.

Seconded by Mr. Steve Murphy

Adopted by voice vote

15. Case No.: L05-FUN-RBS-2005016231

Complainant alleges that it performed the funeral services for a man who had a pre-need contract with the respondent FH and the respondent FH will not reimburse them.

Recommendation: Transfer to Burial Services

A motion was made by Mr. Foster to accept Counsel's recommendation.

Seconded by Mr. Steve Murphy

Adopted by voice vote

16. Case No.: L06-FUN-RBS-2006000911

Anonymous compliant was sent in alleging that there was unlicensed embalming activity at the respondent FH. A field inspector conducted a thorough investigation of the compliant and found no evidence of unlicensed activity. He obtained the monthly report of funeral directors for the last two years of respondent FH and conducted numerous interviews with employees of the respondent FH, including the person that the compliant references as the one conducting embalming without a license.

Recommendation: Dismiss

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Ms. Vincent

Adopted by voice vote

17. Case No.: L06-FUN-RBS-2005042391

Complaint is the result of an inspector's notice of violation which alleges: FH not registered as a pre-need seller.

Recommendation: Transfer to Burial Services

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Ms. Vincent

Adopted by voice vote

18. Case No.: L06-FUN-RBS-2005041321

Complaint is the result of an inspector's notice of violation which alleges: six FTC violations; permanent identification tags insufficient; crematory license not available for inspection.

FH is no longer in business.

Recommendation: Close with no action

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Ms. Helling

Adopted by voice vote

19. Case No.: L06-FUN-RBS-2005042861

Inspector re-inspected the FH. Complaint is the result of an inspector's notice of violation which alleges: several FTC violations.

After two requests, no response has been received.

Recommendation: Consent Order assessing \$500 civil penalty and authorization for a Formal Hearing.

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Mr. Foster

Adopted by voice vote

20. Case No.: L06-FUN-RBS-2005042931

Complaint is the result of an inspector's notice of violation which alleges: FH did not have its establishment license available for inspection. Respondent's establishment license expired on September 30, 2005. The Respondent renewed the establishment license within the 60 day period on November 28, 2005. During this time the FH conducted approximately 28 services on an expired license. The inspection was conducted on November 28, 2005 and the check for renewal was received on that day.

After two requests, no response has been received.

Recommendation: Consent Order assessing \$2,800 civil penalty (\$100 for each service performed on an expired license) and authorization for a Formal Hearing.

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Mr. Foster

Adopted by voice vote

21. Case No.: L06-FUN-RBS-2005045301

Complaint is the result of an inspector's notice of violation which alleges: four FTC violations; including caskets in display room did not agree with the CPL and duplication of charge for basic services of FD and staff when direct cremation was charged. The inspector also noted that the embalming drainage area was in a deteriorated condition. FH did not have any permanent ID tags available for inspection, and based on a random inspection of records, the FH did not retain a copy of the cremation authorization form.

After two requests, no response has been received.

Recommendation: Consent Order assessing \$2000 civil penalty and authorization for a Formal Hearing.

A motion was made by Mr. Foster to accept Counsel's recommendation and for the establishment to be re-inspected within 30 days after the Consent Order is issued by the staff attorney.

Seconded by Mr. Steve Murphy

Adopted by voice vote

22. Case No.: L06-FUN-RBS-2005043831

Complaint is the result of an inspector's notice of violation which alleges: four FTC violations.

After two requests, no response has been received.

Recommendation: Consent Order assessing \$500 civil penalty and authorization for a Formal Hearing.

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Ms. Helling

Adopted by voice vote

23. Case No.: L06-FUN-RBS-2005044861

Complaint is the result of an inspector's notice of violation which alleges: FTC pricing violations. Inspector also noted that the licenses of the funeral director and embalmer were not available for inspection.

Recommendation: Consent Order assessing \$750 civil penalty and authorization for a Formal Hearing.

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Ms. Vincent

Adopted by voice vote

24. Case No.: L06-FUN-RBS-2006002391

Complainant alleges that respondent FH is engaged in false advertising. The newspaper ad states that the FH is the "___ counties only family owned and operated funeral establishment." Complainant alleges that this is false.

FH responds that this is not false but it will change ad if necessary.

Recommendation: Dismiss

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Ms. Hellum

Adopted by voice vote

25. Case No.: L06-FUN-RBS-2006001351

Complainant alleges that respondent FH embalmed her father without her knowledge or permission. Complainant's father died at 1 a.m. and his body was taken to respondent FH. The complainant went to the FH the next morning to discover that her father's body had been embalmed. The FH acknowledged their mistake, apologized to the family, and did not charge for the embalming.

FH responds that it did in fact make the mistake of embalming without consent from the family. FH states that there was a misunderstanding between 2 employees involved. The embalmer embalmed the body thinking there had been permission given. FH apologizes for this mistake and states that they do not have a practice of picking up bodies and embalming without permission.

Recommendation: Consent Order assessing \$1000 civil penalty and authorization for a Formal Hearing.

A motion was made by Mr. Foster to accept Counsel's recommendation.

Seconded by Mr. Steve Murphy

Adopted by voice vote

26. Case No.: L06-FUN-RBS-2006001121

Complaint is the result of an inspector's notice of violation which alleges: five FTC price violations; including three caskets in the selection room were not on the CPL.

FH sent in the corrected price lists.

Recommendation: Consent Order assessing \$250 civil penalty and authorization for a Formal Hearing.

A motion was made by Ms. Vincent to accept Counsel's recommendation.

Seconded by Mr. Foster

Adopted by voice vote

27. Case No.: L06-FUN-RBS-2005043861

Complaint is the result of an inspector's notice of violation which alleges: one FTC price violation; a body in a casket did not have a permanent ID tag; the embalming room conditions were not acceptable for operation.

After two requests, no response has been received.

Recommendation: Consent Order assessing \$750 civil penalty and authorization for a Formal Hearing.

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Mr. Foster

Adopted by voice vote

28. Case No.: L06-FUN-RBS-2005044871

Complaint is the result of an inspector's notice of violation which alleges: the FH has not made a proper ownership change as required by the statute. The owner of the FH died in 2004 and the FH has not applied for an ownership change. After two requests, no response has been received.

Recommendation: Consent Order assessing \$1000 civil penalty and authorization for a Formal Hearing.

A motion was made by Mr. Foster to accept Counsel's recommendation.

Seconded by Mr. Steve Murphy

Adopted by voice vote

29. Case No.: L06-FUN-RBS-2005045291

Complaint is the result of an inspector's notice of violation which alleges: FTC violations; GPL, CPL, goods and services list, and OBCPL were not present at the time of inspection; no caskets were in the selection room; the manager was not present at the time of inspection; FDs and embalmers license was not present at inspection; establishment license was not present; copy of the crematory license and a copy of the last inspection report was not present; there were no permanent ID tags available for inspection. Inspector noted that the FH was empty and that it looked like the business had been closed down.

FH response was that the bank had foreclosed on the property and they were forced to evacuate the premises. FH states that they have been approved for a loan and will be able to reenter the building. FH states that at that time it will be in compliance with all State regulations.

Recommendation: Consent Order assessing \$1000 civil penalty and authorization for a Formal Hearing.

A motion was made by Ms. Vincent to accept Counsel's recommendation.

Seconded by Ms. Hellum

Adopted by voice vote

30. Case No.: L06-FUN-RBS-2005043881

Complaint is the result of an inspector's notice of violation which alleges: the sign at the FH indicates two separate funeral establishments (two different names) are operating at the location. One FH establishment name is licensed with the State while the other name is not. The inspector also obtained a business card from an employee of the FH which is in violation of the law because there is nothing on the card which would alert you that this person is not a licensed FD. At one time this person was registered as an apprentice. His registration expired in April of 2004.

FH responds that it did not know that the name was in violation of the law. It states that inspectors came in December of 2004 and did not say anything about the name/sign being in violation of the law, therefore the FH was under the

assumption that it was in compliance. FD also states that he was unaware of the business cards with the name of the unlicensed person. He would never have allowed these. FD states that the unlicensed person did not engage in funeral directing or embalming since his apprentice registration has expired.

Recommendation: Consent Order assessing \$1000 civil penalty and authorization for a Formal Hearing. Respondent will be required to submit proof that it is not operating under an unlicensed name.

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Mr. Foster

Adopted by voice vote

31. Case No.: L06-FUN-RBS-200600113

Complaint is the result of an inspector's notice of violation which alleges: FH establishment corporate status is inactive.

The FH sent in a letter from its CPA, stating that the FH is in the process of reinstatement.

Recommendation: Dismiss

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Ms. Vincent

Adopted by voice vote

32. Case No.: L06-FUN-RBS-2006001151

Complaint is the result of an inspector's notice of violation which alleges: several FTC violations, including, deficiencies on the GPL and CPL.

After two requests, no response has been received from the FH.

Recommendation: Consent Order assessing \$500 civil penalty and authorization for a Formal Hearing.

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Ms. Vincent

Adopted by voice vote

33. Case No.: L06-FUN-RBS-2005045321

Complaint is the result of an inspector's notice of violation which alleges: several FTC violations, including, OBCPL was not available for inspection and there were deficiencies on the GPL and CPL. The inspector also noted that remains in the chapel did not have a permanent ID tag.

After two requests, no response has been received.

Recommendation: Consent Order assessing \$750 civil penalty and authorization for a Formal Hearing

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Ms. Vincent

Adopted by voice vote

34. & 35. Case No.: L06-FUN-RBS-2006000491 & 2006000501

Respondent, a licensed FD and embalmer, was arrested in November of 2005 for simple possession of crack cocaine and possession of drug paraphernalia. He has been charged with possession of drug paraphernalia. The case is pending in court. Respondent is now in a drug rehabilitation facility. Respondent is unemployed and indigent at this time.

Respondent's mother answered the compliant. She states that he is in treatment, off drugs, and he is trying to get his life together.

Recommendation: Letter of Warning – Respondent must inform Board when he obtains work as a FD or embalmer.

A motion was made by Ms. Vincent for authorization of a Formal Hearing for consideration of suspension of both licenses.

Seconded by Mr. Steve Murphy

Adopted by voice vote with Ms. Hellum voicing opposition

36. Case No.: L05-FUN-RBS-2005025231

The Complainant alleges that they were charged a different price than what was told to them after FH accepted insurance policy. The policy was bought by the complainant's mother in 1943 for \$250.00, and was paid up in 1963. Complaint alleges that before the policy holder passed away she went to the FH and was told that she would only have to pay \$500 for the funeral and that the insurance policy would cover the rest. The dispute is over how much the policy actually covered of the mother's funeral costs. Total cost charged to complainant was

\$2,328.33. Complainant also disputes the charge of \$250 for preparation of body – complainant says that they provided the clothes and paid to have deceased hair fixed and that FH should not have charged for this.

FH responded that the funeral cost was \$5,783.33 and that the insurance covered \$3,455.00 of the funeral and that is why complainant had to pay \$2,328.33. Also there was no written contract between deceased and FH for a \$500 funeral –response that deceased was mistaken.

Recommendation: Letter of Caution - FH needs to be clear when explaining old burial policies to customers.

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Ms. Helling

Adopted by voice vote

37. Case No.: L05-FUN-RBS-2005032211

Complainant alleges FH is not honoring terms of insurance policy (bought in 1948), is charging for things that are covered in the policy, and is not giving credit for things that are not used. Alleges that FH charged \$1900 in excess of what the policy covered. Policy stated that the body could be transported free for the first 100 miles and thereafter there would be a charge per additional mile. FH advised the family to transport the body by air. The complainant says this would have been very costly to the family. The family had to make their own arrangements for the body to be transported to the FH. Complainant alleges that the only services used by the family were: embalming, casket, vault, transporting body to cemetery, and setting up the gravesite. They feel the burial policy should have covered these costs.

FH response is that the burial policy has a face value of \$250 and they gave a \$3160 discount to honor the policy. Total funeral cost was \$5078.83, after the discount was given, the amount to be paid by the family came to \$1918.83. With regard to the transportation of the body, FH states that complainant arranged for this herself and they told her that they usually have a local FH in her area do the removal, embalming and then take the body to the airport for the transport to this FH. They state that the complainant went out on her own and made arrangements and they are not responsible for services they did not negotiate or contract for. They suggest that the complainant should contact the insurance company for reimbursement of the transportation.

Recommendation: Letter of Caution - FH needs to be clear when explaining old burial policies to customers.

A motion was made by Mr. Foster to accept Counsel's recommendation.

Seconded by Mr. Steve Murphy

Adopted by voice vote

38. Case No.: L05-FUN-RBS-2005019141

Complainant is questioning the cost of father's funeral. Her parent's purchased a complete pre-need funeral arrangement in 1982. Complainant paid \$3,513 out of pocket and the FH is still sending her a bill for \$1,883.21. Complainant alleges that she was overcharged for funeral services in that she was required to purchase a vault that was not required on the pre-need contract, and that she was assessed a *regulatory charge* as well as charges incurred by FH in picking up her father's body.

In its response, FH concedes that complainant was charged for a vault and some other services that were not on the original pre-need arrangement, but it claims that those additional charges were all necessary and legitimate. It asserts that the cemetery at which decedent was buried, did not in 1982 require a vault, whereas it does now. The FH also claims that complainant's check for travel expenses covered air fare (in transporting remains from Indiana to Knoxville) but did not cover additional mileage incurred by FH in retrieving the body from Knoxville by car and transporting it back to FH, which was a five to six hour trip.

Recommendation: Letter of Warning - FH needs to be clear when explaining old burial policies to customers, FH should not assess a regulatory charge.

A motion was made by Ms. Hellum to accept Counsel's recommendation.

Seconded by Mr. Steve Murphy

Adopted by voice vote

39. & 40. Case No.: L05-FUN-RBS-2005018701; L05-FUN-RBS-2005018681

Respondent seller of funeral merchandise is advertising in the Tennessean for "free cremation" *with purchase of adult urn" & "free funeral service" *with purchase of casket conducted by licensed funeral establishment." The seller of merchandise is not a licensed funeral establishment and is not required to be so by law. The president of the corporation is a licensed funeral director and embalmer. An inspector was sent to the store to investigate the ad and he found in the retail store a brochure which states "casket pricing includes a free funeral service." There is a disclaimer at the bottom which reads "ALL FUNERAL SERVICES will be conducted by NAME (licensed funeral establishment), NOT through corp."

A response from the seller corporation's attorney states that the Tennessean inadvertently omitted the bottom line of the disclaimer. He states the disclaimer will read "with purchase of adult casket, you receive a referral to a licensed funeral establishment for arranging a funeral service." There was no response about the free cremation ad.

Recommendation: Cease and Desist Letter

Mr. Steve Murphy recused himself.

A motion was made by Ms. Hellum to accept Counsel's recommendation.

Seconded by Mr. Foster

Adopted by voice vote

41. Case No.: L05-FUN-RBS-2005027981

Inspector found an internet listing of a cremation service company which is not a licensed crematory. The phone number and address on the listing is the same as an alternate number and address listed for a licensed FD on the license data base.

FD replies that he does not have a company as shown on the internet. He claims he does not know how it got there. He also claims that if we gave him the information on how to erase it he would.

Recommendation: Consent Order assessing \$500 civil penalty and authorization for a Formal Hearing.

Mr. Steve Murphy recused himself.

A motion was made by Ms. Vincent to send a Cease and Desist Letter in addition to the Consent Order and civil penalty.

Seconded by Mr. Foster

Adopted by voice vote with Ms. Hellum voicing opposition

42. Case No.: L06-FUN-RBS-2006006821

Complainant alleges that a merchandise seller is implying that it is a funeral director because it is advertising in the yellow pages under the heading "funeral directors."

Recommendation: Cease and Desist letter

Mr. Cook recused himself

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Ms. Vincent

Adopted by voice vote

43. Case No.: L06-FUN-RBS-2006006811

Complainant alleges that a merchandise seller is implying that it is a funeral director because it is advertising in the yellow pages under the heading "funeral directors."

Recommendation: Cease and Desist letter

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Ms. Vincent

Adopted by voice vote

44. Case No.: L06-FUN-RBS-2006002211

Complainant FD alleges that respondent FD is making slanderous remarks about her and feels that she is being harassed.

Respondent FD denies allegations.

Recommendation: Dismiss

A motion was made by Ms. Vincent to accept Counsel's recommendation.

Seconded by Mr. Steve Murphy

Adopted by voice vote

45. Case No.: L06-FUN-RBS-2006006261

Complaint is the result of an inspector's notice of violation which alleges: several FTC violations; including deficiencies on the GPL. The inspector also noted that a different establishment name is listed on the GPL, goods and services contract, and the merchandise price list. The inspector also noted that the manager was not present at the time of inspection. He found that the business, a branch of a FH, is open two days a week and is manned by an unlicensed person.

FH responds that the price lists have been corrected. FH also states that there is a licensed FD in charge of this location who is the manager.

Recommendation: Consent Order assessing \$250 civil penalty, a Letter of Warning, and authorization for a Formal Hearing.

A motion was made by Mr. Foster to accept Counsel's recommendation.

Seconded by Ms. Vincent

Adopted by voice vote

46. Case No.: L06-FUN-RBS-2006006321

Complaint is the result of an inspector's notice of violation which alleges: a different establishment name is listed on the GPL, goods and services contract, and the merchandise price list. The inspector also noted that there was no permanent ID tag on a body in the chapel.

FH responds that the price lists have been corrected. FH also states that permanent ID devices are used and that this was an isolated incident.

Recommendation: Consent Order assessing \$500 civil penalty and authorization for a Formal Hearing.

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Ms. Vincent

Adopted by voice vote

47. Case No.: L06-FUN-RBS-2006006351

Complaint is the result of an inspector's notice of violation which alleges: several FTC violations; including seven caskets in the selection room were not listed on the CPL, and based on a random inspection of records several goods and services contracts did not have the reason for embalming stated.

FH sent in a corrected CPL that listed all of the caskets in the selection room.

Recommendation: Consent Order assessing \$250 civil penalty and authorization for a Formal Hearing.

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Ms. Vincent

Adopted by voice vote

**STAFF REPORT:
ROBERT B. GRIBBLE, EXECUTIVE DIRECTOR**

1. Closed Establishments:

Two establishments have closed since the last board meeting.

- **Victory Funeral Home, Inc. – Memphis, TN**
The office received a letter from Dorothy E. DeWalt, President of Victory Funeral Home, Inc., stating the establishment located at 845 Marechalneil Street closed effective January 10, 2006, upon the Board's approval of a new establishment license for Auston-Victory Funeral Home at this location.
- **Roesch-Patton-Austin-Bracey-Charlton Funeral Home – Nashville, TN**
The office received a facsimile on February 21, 2006, from Jeff L. Duffer, the general manager, stating the establishment located at 1715 Broadway closed effective February 21, 2006.

2. Disciplinary Actions:

The Board has previously approved the consent orders and civil penalties. The Consent Orders have been signed and the civil penalties paid by the respondents with exception of a payment plan for the first complaint. The executive director requests the Board's acceptance of the following consent orders.

Complaint No. 2005024531

Violation: Failure to provide statutorily required crematory disclosures, failure to list reason for embalming on the statement of funeral goods and services selected, improper ventilation and an extreme unsanitary condition of the embalming/preparation room and failure to make available for inspection the license of a funeral director and embalmer

Action: \$2000 Civil Penalty

Complaint No. 2005026481

Violation: Immoral or unprofessional conduct and misrepresentation or fraud in the conduct of the business of the funeral establishment –forgery of a signature on a preneed policy without authorization to do so

Action: \$2000 Civil Penalty

Complaint No. 2005026391

Violation: Immoral or unprofessional conduct – payment directly or indirectly, or caused to be paid directly or indirectly any sum of money or other valuable consideration for the securing of business or for obtaining authority to dispose of dead human bodies

Action: \$1000 Civil Penalty

Complaint No. 2005028101

Violation: Failure to place required permanent identification device in the cremains of a decedent, failure to provide statutorily

required crematory disclosures and failure to provide written receipt for cremated remains on another decedent
Action: \$1500 Civil Penalty

Complaint No. 2005039471

Violation: Caskets set up in another room other than the selection room that were being offered to the consumer in a package price which were not listed on the casket price list

Action: \$1000 Civil Penalty

Complaint No. 2004197131

Violation: Failure to provide an itemized list of goods and services after arrangements and immoral or unprofessional conduct – receiving full payment for a commodity and not providing the commodity for over a year after it was paid for

Action: \$1000 Civil Penalty

Complaint No. 2005025701

Violation: Several pricing violations, failure to include an effective date on required price lists, failure to properly provide the materials of which caskets are made and failure to place a reason for embalming on the statement of funeral goods and services selected

Action: \$1000 Civil Penalty

Complaint No. 2005039351

Violation: Incorrect price on the general price list for graveside services, the water in the funeral home had been turned off and the water meter was padlocked and the manager did not maintain regular hours

Action: \$1000 Civil Penalty

Complaint No. 2005039431

Violation: Failure to present required prices lists at inspection, the current license and last inspection report of crematory was not present at time of inspection and licenses of one employee was not available for inspection

Action: \$1000 Civil Penalty

Complaint No. 2005024911

Violation: Failure to make available for inspection the licenses of six separate funeral directors and employees and failure to make available the statement of funeral goods and services selected

Action: \$500 Civil Penalty

Complaint No. 2005041491

Violation: The casket and outer burial container price ranges did not match the price ranges on the general price list, no price

range for cremation, caskets in the selection room did not match casket prices listed on the casket price list, no description of outer burial containers and the licenses of one funeral director and embalmer were not available for inspection.

Action: \$750 Civil Penalty

Complaint No. 2005043791

Violation: Six caskets which were in the selection room were not listed on the casket price list, a copy of the crematory license and last crematory inspection report were not available, and the license of one funeral director was not available

Action: \$750 Civil Penalty

Complaint No. 2005041341

Violation: Deficiencies on general price list, outer burial container price list and statement of funeral goods and services selected, including the general price list was in book form but needed to be available to distribute to consumers, no description of items included in the traditional funeral service package and no reason for embalming on the statement of funeral goods and services selected

Action: \$750 Civil Penalty

Complaint No. 2005042751

Violation: Deficiencies on general price list, casket price list, outer burial container price list and statement of funeral goods and services selected and failure to affix a permanent identification device to the decedent

Action: \$750 Civil Penalty

Complaint No. 2005028051

Violation: Deficiencies on general price list, casket price list and outer burial container price list, failure to list caskets in the selection room on the casket price list, failure to retain changed price lists for the statutorily required period of one year after change and failure to make establishment license available for inspection

Action: \$700 Civil Penalty

Complaint No. 2005042501

Violation: The ventilation/exhaust system in the embalming/preparation room was not in proper working condition

Action: \$500 Civil Penalty

Complaint No. 2005042771

Violation: The general price list, casket price list, outer burial container price list and statement of funeral goods and services

selected were not available for inspection and the license of one funeral director was not available for inspection
Action: \$500 Civil Penalty

Complaint No. 2005040051

Violation: Deficiencies on general price list and casket price list, including improper price ranges

Action: \$500 Civil Penalty

Complaint No. 2005041861

Violation: Deficiencies on general price list, casket price list and outer burial container price list

Action: \$500 Civil Penalty

Complaint No. 2005042431

Violation: Deficiencies on general price list, casket price list and outer burial container price list, two outer burial containers in the selection room were not priced and two were priced higher in the selection room than on the outer burial container price list

Action: \$500 Civil Penalty

Complaint No. 2005036821

Violation: The casket price list lacked strict specific disclosures and the cremation authorization did not contain required statutorily language

Action: \$500 Civil Penalty

Complaint No. 2005041671

Violation: Cremation authorizations were not in the files of two decedents, duplication of a charge and a price discrepancy

Action: \$500 Civil Penalty

Complaint No. 2005025311

Violation: Deficiencies on price lists, including failure to include required disclosure language on the general price list for basic services

Action: \$500 Civil Penalty

Complaint No. 2005031331

Violation: Immoral or unprofessional conduct – sending statements to relative who never entered into a contract and was not responsible for the bill

Action: \$500 Civil Penalty

Complaint No. 2005031341

Violation: Pricing violations, failure to list caskets in the selection room on the casket price list and failure to affix permanent identification device on decedent

Action: \$500 Civil Penalty

Complaint No. 2005025321

Violation: Deficiencies on price lists, including failure to include required disclosure language on the general price list for basic services

Action: \$500 Civil Penalty

Complaint No. 2005024621

Violation: Failure to provide statutorily required crematory disclosures and deficiencies on the casket and outer burial container price lists

Action: \$500 Civil Penalty

Complaint No. 2005025101

Violation: Failure to affix permanent identification device to decedent and failure to make available for inspection the license of a funeral director and embalmer

Action: \$250 Civil Penalty

Complaint No. 2005042911

Violation: The outer burial container price list did not include a description of each container

Action: \$250 Civil Penalty

Complaint No. 2005039441

Violation: Five outer burial containers were different on the units in the selection room than on the price list and deficiencies on the general price list and casket price list

Action: \$250 Civil Penalty

Complaint No. 2005043361

Violation: Advertisement that listed and pictured individuals who are not licensed as a funeral director or embalmer

Action: \$250 Civil Penalty

Complaint No. 2005025281

Violation: Failure to provide statutorily required crematory disclosures and language describing a casket on the immediate burial section of the general price list does not agree with the language on the casket price list

Action: \$250 Civil Penalty

Complaint No. 2005041851

Violation: A price discrepancy between the casket price list and the general price list and failure to affix a permanent identification device on the decedent

Action: \$250 Civil Penalty

Complaint No. 2005041391

Violation: Discrepancies on the general price list

Action: \$250 Civil Penalty

A motion was made by Mr. Steve Murphy to accept the Executive Director's recommendation to accept the consent orders.

Seconded by Ms. Vincent

Adopted by voice vote

3. Manager Changes

There have been seventeen establishments report manager changes since the last board meeting.

Name of Establishment	Name of New Manager
Nashville Embalming, LLC Nashville, TN	Richard Lloyd Smith
Rawlings Funeral Home Sevierville, TN	David Eric Manes
Woodall-Anderson & Dugger FH & Crem. Ser. Johnson City, TN	Alfred Beryl Dugger
Northeast Tennessee Mortuary Services Bluff City, TN	Matthew Beryl Dugger
Mid-South Mortuary & Removal Service Memphis, TN	John E. Dowling
Highland Mem. Park, Funerals & Cremations Knoxville, TN	Jerry Wayne Taylor
Highland South Mem. Park, Fun. & Crem. Knoxville, TN	Damon W. Gibson
Highland West Mem. Park, Fun. & Crem. Knoxville, TN	Grady Tilman Rich
Wilson County Funeral Home & Mem. Park Lebanon, TN	Joseph Allen Moore
Gibson County Funeral Home Humboldt, TN	Earl M. Shaw, Jr.

Newby Funeral Home	Scotty Joe Brewer
Gallatin, TN	
Holley-Gamble Funeral Home	Benjamin John Gamble
Caryville, TN	
Phillips-Robinson Co., Inc., Hadley Chapel	Charles E. Worrell, Sr.
Old Hickory, TN	
Cole & Garrett FH & Cremation Services	Donald L. Garrison
White House, TN	
Stockdale-Malin Funeral Home	Jeffrey Clay Gaia
Camden, TN	
Pettus-Turnbo Funeral Home	Henry Clay Smith
Lawrenceburg, TN	
Calvary Memorial Funeral Home	Durell Antoine Williams
Memphis, TN	

4. Request from the Tennessee Funeral Directors Association -

Their annual convention will be Sunday, June 4 – Tuesday, June 6 at the Franklin Marriott Cool Springs in Franklin. They have requested that the Board of Funeral Directors and Embalmers hold their regular monthly meeting during the TFDA Convention on Tuesday, June 6TH from 1 P.M. to 4 P.M.

5. Funeral Rules

The executive director suggests that the Board start thinking about rule changes and bring specific written ideas to the meeting in April. The director also requests the Board's approval for him to work in conjunction with the staff attorney in preparing proposed ideas for presentation to the Board at the May meeting.

A motion was made Mr. Steve Murphy to accept Executive Director's suggestion.

Seconded by Ms. Vincent

Adopted by voice vote

OTHER BUSINESS:

Discussion was held relative to having the past president's luncheon on May 9, 2006. The Executive Director is to check availability for this date.

ADJOURN:

A motion was made by Mr. Steve Murphy to adjourn.

Seconded by Mr. Foster

Adopted by voice vote

There being no further business, the meeting was adjourned at 12:26 p.m.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director